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# Reasons for Decision

**Enbridge Pipelines Inc.**

**OH-1-2000**



**May 2001**

**Facilities**



# National Energy Board

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## Reasons for Decision

In the Matter of

**Enbridge Pipelines Inc.**

Terrace Expansion Program Phase II

**OH-1-2000**

**May 2001**

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## Abbreviations

Act	<i>National Energy Board Act</i>
AFUDC	Allowance for Funds Used During Construction
ARC	Aboriginal Resource Consortium
b/d	barrels per day
Board	National Energy Board
BTC	Battlefords Tribal Council
CAPP	Canadian Association of Petroleum Producers
CEAA	<i>Canadian Environmental Assessment Act</i>
Enbridge	Enbridge Pipelines Inc.
FSIN	Federation of Saskatchewan Indian Nations
GH-4-98	Maritimes and Northeast Pipeline Management Ltd., Reasons for Decision dated January 1999
GIC	Governor in Council
HP	horsepower
km	kilometre
KP	kilometre post
m <sup>3</sup> /d	cubic metres per day
mm	millimetre
M&NP	Maritimes and Northeast Pipeline Management Ltd.
OD	outside diameter
OH-1-98	Interprovincial Pipe Line Inc., Reasons for Decision dated June 1998
PADD	U.S. Petroleum Administration for Defense Districts
PFRA	Prairie Farm Rehabilitation Administration
PPBoRs	plans, profiles and books of reference

RA	responsible authority pursuant to CEAA
Task Force	Treaty Four - Treaty Six FSIN Task Force
Terrace Phase II	Enbridge's Terrace Expansion Program Phase II
WTI	West Texas Intermediate



## **Recital and Appearances**

IN THE MATTER OF the *National Energy Board Act* (Act) and the Regulations made thereunder; and

IN THE MATTER OF an application dated 15 November 2000 by Enbridge Pipelines Inc. for a Certificate of Public Convenience and Necessity pursuant to section 52 of the Act and related Orders pursuant to section 58 of the Act to construct the facilities that comprise Phase II of its Terrace Expansion Program; and

IN THE MATTER OF Hearing Order OH-1-2000.


HEARD in Calgary, Alberta on 19 and 20 March 2001.

BEFORE:

J.A. Snider	Presiding Member
J.S. Bulger	Member
E. Quarshie	Member

APPEARANCES:

M.L. Henderson	Enbridge Pipelines Inc.
O. DeVries	Canadian Association of Petroleum Producers
S. Castonguay	BP Canada Energy Company
L. Keough	Express Pipeline Limited
D. Armstrong	Imperial Oil Limited
G. Baerg	Tidal Energy Marketing Inc.
M. Boyle	Trans Mountain Pipe Line Company Limited
M. Ozirny	Treaty Four - Treaty Six FSIN Task Force
P. Enderwick	Board Counsel



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## Chapter 1

# Introduction

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On 15 November 2000, Enbridge Pipelines Inc. (Enbridge) applied to the National Energy Board (Board) pursuant to sections 52 and 58 of the *National Energy Board Act* (Act) to construct the facilities that comprise Phase II of its Terrace Expansion Program (Terrace Phase II). Specifically, Enbridge applied for:

- a Certificate of Public Convenience and Necessity pursuant to section 52 of the Act;
- an Order pursuant to section 58 of the Act, exempting all Terrace Phase II pumping units, related facilities and station piping from the requirements of sections 30, 31 and 47 of the Act; and
- an Order pursuant to section 58 of the Act, exempting the first loop of Terrace Phase II (i.e., the portion of line pipe between kilometre post (KP) 175.9 and KP 209.0) from the requirements of subsections 31(c) and (d) and section 33 of the Act.

The Terrace Phase II facilities include approximately 123 km (76 miles) of 914 mm (36 inch) outside diameter (OD) pipeline to be constructed in three loops between Hardisty, Alberta and Kerrobert, Saskatchewan, as well as several additions and modifications to existing pump stations. The facilities would be constructed on both existing Enbridge station property and new lands adjacent to its existing right of way.

Terrace Phase II is the second phase of Enbridge's multi-phase Terrace Expansion Program, which was conceived by Enbridge and industry in 1997 after extensive consultation that addressed the best method of expanding the Enbridge system to meet growing capacity needs. This consultation resulted in the signing of the Terrace Toll Agreement in 1998 by Enbridge and the Canadian Association of Petroleum Producers (CAPP). Pursuant to the Terrace Toll Agreement, CAPP requested Enbridge on 25 October 2000 to proceed with Terrace Phase II. The facilities comprising Terrace Phase I were approved by the Board in its OH-1-98 Reasons for Decision<sup>1</sup>.

The estimated cost of Terrace Phase II is \$140 million. The project would increase the capacity of the existing Enbridge system by 6 900 cubic metres per day (m<sup>3</sup>/d) (43,400 barrels per day (b/d)) to address the heavy crude oil capacity constraint expected on the system in 2002. Enbridge proposed to construct the Terrace Phase II facilities during the summer and fall of 2001 in order to be in service by the fourth quarter of 2001 as requested by its customers.

The Board decided to consider the application in an oral public hearing and issued Hearing Order OH-1-2000 on 13 December 2000, which set out the Directions on Procedure for the proceeding. The issues examined during the proceeding are listed in Appendix I. The hearing was held in Calgary, Alberta on 19 and 20 March 2001.

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<sup>1</sup> Interprovincial Pipe Line Inc., OH-1-98, Reasons for Decision dated June 1998.

As a responsible authority under the *Canadian Environmental Assessment Act* (CEAA), the Board completed an Environmental Screening Report for the Terrace Phase II project pursuant to the CEAA and the Board's regulatory process.



## Chapter 2

# Facilities

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### 2.1 Current and Proposed Operation

Terrace Phase I involved the construction of 619 km (385 miles) of pipeline over 15 loop sections to create a fifth pipeline (Line 4) on the Enbridge system between Kerrobert, Saskatchewan and the international border south of Gretna, Manitoba. When placed in service in 1999, Terrace Phase I allowed the system to operate in a straight-through configuration between Kerrobert and the international border, instead of the previous looping configuration<sup>1</sup>. Upstream of Kerrobert, the system continued to operate in a looping configuration.

As shown in Figure 2-1, Terrace Phase II would extend Line 4 upstream of Kerrobert to Hardisty, Alberta by the construction of three new 914 mm (36 inch) OD pipe sections to connect with existing 1 219 mm (48 inch) OD pipe sections that are currently used for the operation of Line 3. By extending Line 4, the Enbridge system would then operate in a straight-through configuration between Hardisty and the international border and in a looping configuration between Edmonton and Hardisty. No changes are proposed for Lines 1 and 13. Appendix II provides an illustration of the proposed system operation post Terrace Phase II.

Once Terrace Phase II is completed, the annual capacity of Line 2 would increase by 2 000 m<sup>3</sup>/d (12,600 b/d) and the annual capacity of Line 4 would increase by 4 900 m<sup>3</sup>/d (30,800 b/d).

### 2.2 Applied-for Facilities

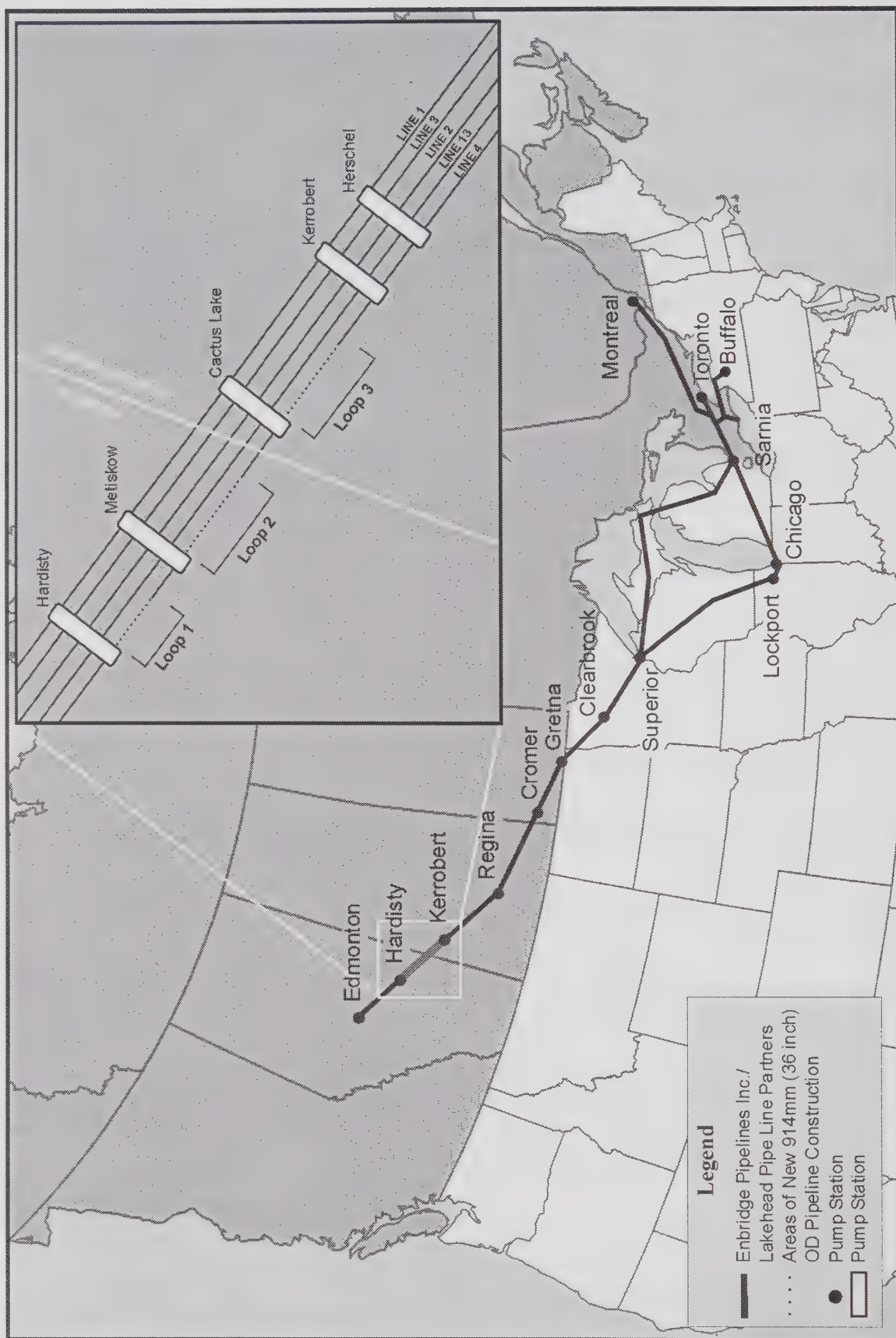
A summary of the proposed facility additions and modifications is provided below (refer to Table 2-1 for a more detailed summary):

- Line 2 - pump and station piping modifications and motor replacements;
- Line 3 - installation of a new pump station with three new pump units and required building additions, installation of two scraper traps and the removal of two pump units and associated piping; and
- Line 4 - construction of three 914 mm OD pipeline loops totalling approximately 123 km (76 miles), installation of a new pump station with three new pump units and required building additions, three scraper traps and tie-in facilities and delivery and injection piping, and modification of station piping.

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<sup>1</sup> In a looping configuration, the product in a specific line crosses over to a larger diameter pipeline upstream of each pump station. At the discharge side of each pump station, the product flows back into the original diameter pipe for that line.

**Figure 2-1**  
**Enbridge System Map - Terrace Phase II**



**Table 2-1  
Applied-for Facilities**

	Facilities	Location			
		Hardisty	Metiskow	Cactus Lake	Kerrobert
Line 4	Loop 1: 33.1 km of pipe and tie-in facilities	X			
	Loop 2: 45.1 km of pipe and tie-in facilities		X		
	Loop 3: 44.8 km of pipe and tie-in facilities			X	
	Three scraper traps and connecting piping	X	X	X	
	New pump station: 3 new pump units (15,000 HP)		X		
	New pump and electrical switchgear buildings		X		
	Station piping modifications	X		X	
	Delivery and injection piping	X			
Line 3	New pump station: 3 new pump units (9,000 HP)	X			
	New pump and electrical switchgear buildings	X			
	Two scraper traps and connecting piping	X			
	Removal of two pump units (7,500 HP) and associated piping		X		
Line 2	Pump modifications and motor replacements	X	X	X	
	Station piping modifications				X
	Removal of cross-over piping and associated piping	X	X	X	X
	Removal of three scraper traps at KP 209.0, KP 274.9 and KP 335.0				

Enbridge also indicated that, as a result of the system reconfiguration effected by Terrace Phase II, certain existing cross-over facilities would no longer be required for operation and would be removed. These facilities include cross-over piping between Lines 2, 3 and 4 and associated piping at Hardisty, Metiskow, Cactus Lake and Kerrobert stations.

Enbridge proposed to construct the Terrace Phase II facilities during the summer and fall of 2001 in order to be in service by the fourth quarter of 2001 as requested by its customers. The capital cost of Terrace Phase II is estimated to be \$140 million (refer to Table 2-2).

**Table 2-2**  
**Estimated Capital Cost of the Applied-for Facilities**

<b>Category</b>	<b>Total Cost (\$000)</b>
Materials (Pipelines and Pump Stations)	57,200
Installation	59,200
Land Rights	1,200
Engineering	5,500
Contingency	7,500
General & Administration	4,400
AFUDC	5,000
<b>Total</b>	<b>140,000</b>

## **2.3 Integrity**

### **2.3.1 Line 4 - Internal Inspection Capability**

Enbridge submitted that Line 4, which consists of 914 mm and 1 219 mm OD pipe sections, would be fully capable of internal inspection. Enbridge stated that it has participated with internal inspection tool vendors in developing tools capable of inspecting the differing diameter pipe sections on a single inspection run. This technology has been proven on base line inspection runs of the Terrace Phase I facilities, which used the same pipeline design.

### **2.3.2 Line 2 - Laminar Flow and Idle Pipe Sections**

Since Line 2 would continue to operate in laminar flow<sup>1</sup>, Enbridge submitted that it would continue with its integrity monitoring program, entitled "Internal Corrosion Monitoring and Control Program Line 2", which was developed for Terrace Phase I operation.

The Board questioned the operating status of the 610 mm (24 inch) OD pipe sections that currently form part of Line 2 between Hardisty and Kerrobert. Enbridge submitted that, as a result of its pipeline expansion project in 1985, Line 2 was converted to light crude oil service and certain sections of 864 mm (34 inch) OD pipe were incorporated into the Line 2 operation. Consequently, the adjacent 610 mm OD pipe sections were taken out of the daily operation of Line 2. Enbridge indicated that these 610 mm OD pipe sections have not transported crude oil on a daily basis since 1985. However, these pipe sections

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<sup>1</sup> Laminar flow operation can affect the corrosion environment in a crude oil pipeline. Although crude oil contains less than 0.5 percent water and solid material, the water and solid material can still accumulate in a line if the flow velocity in the line is insufficient to entrain these materials. Under laminar flow conditions, the water and solids will eventually settle to the bottom of the line and accumulate in pools where corrosion processes can be initiated.



have always been included in Enbridge's pipeline integrity management program. Cathodic protection has been maintained on the pipe sections and the condition of the pipe has been monitored by internal inspections carried out in 1974, 1981 and 1991. Enbridge stated that a high-resolution internal inspection of its 610 mm OD pipeline between Hardisty and Kerrobert is scheduled for March 2001.

## **2.4 Design and Construction Safety**

Enbridge submitted that the design and construction of Terrace Phase II would be in accordance with the *Onshore Pipeline Regulations, 1999* and would meet or exceed the requirements of the Canadian Standards Association Z662-99 standard, *Oil and Gas Pipeline Systems*. Further, Terrace Phase II would be designed and constructed in accordance with Enbridge's standards and manuals on file with the Board. Enbridge indicated that certain manuals<sup>1</sup> are being updated and would be filed with the Board once completed.

Enbridge indicated that inspections and audits of Terrace Phase II construction would be conducted to ensure compliance with regulatory requirements and its own construction standards and specifications. During the hearing, Enbridge committed to file with the Board documentation outlining the duties and inspection practices of each of its inspectors and the inspectors' manuals. Additionally, safety compliance audits would be conducted during field visits by the construction superintendent, the engineering team leaders and the project manager. These safety compliance audits would be conducted approximately every two to three weeks. Enbridge committed to file with the Board the checklist that would be utilized for its safety compliance audits.

### ***Views of the Board***

The Board is satisfied that the Terrace Phase II facilities would be designed and constructed in accordance with all regulatory requirements and required standards.

With respect to integrity, the Board is satisfied that Enbridge has adequately addressed the potential integrity issues associated with the idle 610 mm OD pipe sections of Line 2 and the internal corrosion issues in Line 2 resulting from laminar flow operation. The Board is also satisfied that Enbridge's integrity management program would continue to provide adequate internal inspection of the differing diameter pipe sections of Line 4.

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<sup>1</sup> Enbridge's Operations and Maintenance Procedures Book 3 (Tab 7, Pressure Testing) and Book 4 (Welding); Pipeline Construction Specification; Specifications for Station Construction; Safety Manual for Canadian Pipeline Construction; and Contractor Safety Manual (Station Construction).

## Chapter 3

# Environmental, Land and Socio-Economic Matters

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### 3.1 Environmental Matters

The Board considered environmental matters related to Terrace Phase II pursuant to the Act and the CEAA. As a responsible authority (RA), the Board completed an environmental screening pursuant to sub-section 18(1) of the CEAA. The Prairie Farm Rehabilitation Administration (PFRA) was also identified as a RA for the project. The Board assumed the role of Lead RA for environmental assessment purposes. The Environmental Screening Report contains information regarding the environmental assessment, any proposed mitigation and the conditions to be included in any certificate in respect of the project. The Environmental Screening Report also addresses matters pertaining to public consultation.

Pursuant to the OH-1-2000 Directions on Procedure, parties wishing to receive a copy of the Environmental Screening Report for comment were requested to contact the Secretary of the Board before the end of the oral portion of the hearing. Only one interested party, Environment Canada, requested a copy for review. The Board circulated the Environmental Screening Report for comment to Enbridge, the PFRA and Environment Canada. Copies of the report are available on request from the Board's Publication Office.

#### *Views of the Board*

The Board considered the Environmental Screening Report and comments received and determined that, taking into account the implementation of Enbridge's proposed mitigative measures and those set out in the attached conditions (see Appendix IV), Terrace Phase II is not likely to cause significant adverse environmental effects. This represented a decision pursuant to paragraph 20(1)(a) of the CEAA, which was taken prior to making a decision under Part III of the Act in respect of the applied-for facilities.

### 3.2 Land Matters

#### 3.2.1 Route and Facility Site Selection

Routing of the proposed pipeline was influenced by Enbridge's desire to maximize operational efficiency, minimize the amount of new land disturbance and avoid any areas of high environmental sensitivity. After a review of the environmental setting of its pipeline system in the project area, Enbridge stated that it chose the existing pipeline right of way as the preferred route for the following reasons:

- the existing route has been in service for approximately 50 years and is well known to all parties;
- adequate work space is generally available along the route;

- no environmental or socio-economic constraints are encountered along the existing right of way that cannot be effectively mitigated or compensated;
- the effects associated with a widening of an existing pipeline corridor would be incremental, while a new route would affect additional lands and increase the amount of land disturbance; and
- pipeline surveillance and maintenance activities can be conducted more efficiently for pipelines located within a common right of way than in two rights of way that are geographically separated.

The pipeline would be constructed in three loop sections between Hardisty, Alberta and Kerrobert, Saskatchewan. Table 3-1 identifies the location of the three proposed loops, as well as the location of the existing 1 219 mm OD pipe segments.

**Table 3-1**  
**Location of Proposed and Existing Pipe Sections**

<b>Proposed Start Location 914 mm OD</b>	<b>Proposed End Location 914 mm OD</b>	<b>Length (km)</b>	<b>Existing Start Location 1 219 mm OD</b>	<b>Existing End Location 1 219 mm OD</b>	<b>Length (km)</b>
KP 175.9 Loop 1 (Hardisty Terminal)	KP 209.0	33.1	KP 209.0	KP 229.9	20.9
KP 229.9 Loop 2 (Metiskow Station)	KP 275.0	45.1	KP 275.0	KP 290.2	15.2
KP 290.2 Loop 3 (Cactus Lake Station)	KP 335.0	44.8	KP 335.0	KP 351.3	16.3

Enbridge submitted that its siting of new facilities (e.g., pump units, scraper traps and valves) was also influenced by its desire to limit the amount of new land disturbance, as well as to optimize maintenance activities and the use of existing infrastructure associated with its existing facilities (e.g., access roads, power lines and fenced site boundaries). The sites of the tie-in facilities were also restricted by existing Enbridge facilities. Consequently, the new facilities would be located within existing Enbridge lands and no new fee simple lands would be required to accommodate the facilities.

### **3.2.2 Land Requirements and Acquisition**

Approximately 123 km (76 miles) of pipeline would be constructed on new right of way to be acquired adjacent to and south of Enbridge's existing right of way. Enbridge would acquire approximately 116.4 km (72 miles) of new permanent 25 metre (82 feet) wide right of way and approximately 6.6 km (4 miles) of new permanent 20 metre (65 feet) wide right of way. Enbridge would also acquire



temporary work space for such activities as: road, rail, major foreign line and water crossings; three-lift soil handling; and heavy grading where necessary.

Enbridge submitted that 100 percent of the landowners and encumbrancees on Loop 1 had been served with section 87(1) notices and that 61 of the 72 parcels of land required for Loop 1 (85 percent) had been acquired. The 72 parcels of land are owned by 44 landowners, 39 of whom had signed land acquisition agreements at the time of the hearing. For Loops 2 and 3, Enbridge had acquired 93 percent and 44 percent of the required parcels of land, respectively.

### **3.2.3 Section 58 Exemption for Loop 1**

In its application, Enbridge requested exemption under section 58 of the Act from the requirements of subsections 31(c) and (d) and section 33 of the Act for Loop 1 between KP 175.9 and KP 209.0<sup>1</sup>. The effect of this exemption would be to relieve Enbridge from the requirement to file plans, profiles and books of reference (PPBoRs) for Loop 1 and thus the detailed route hearing process pursuant to sections 34 and 35 of the Act would not be triggered. The proposed exemption would allow Enbridge to proceed with construction on the lands for which it has an easement upon receipt of Governor in Council approval for those facilities and upon issuance of an exemption order by the Board. Loops 2 and 3 would be subject to the filing of PPBoRs and the detailed route hearing process as required.

Enbridge testified that it wished to complete construction of the Terrace Phase II facilities in one growing season in order to minimize impact on both the environment and landowners. To achieve this, Enbridge would commence construction starting with Loop 1 on 15 July 2001, followed by Loops 2 and 3, with an anticipated completion date of all three sections by year-end 2001. Enbridge also noted that this schedule would allow it to meet its customers' expectations for an in-service date in the fourth quarter of 2001.

Enbridge submitted that, if it did not receive the requested exemption for Loop 1, the Terrace Phase II project would not be completed until the first quarter of 2002, which would create issues for the petroleum producers who wish to utilize the facilities by year end.

#### ***Views of the Board***

The Board is satisfied with Enbridge's rationale for locating the proposed facilities and associated temporary work space either within or adjacent to its existing right of way and on station property. The proposed general route is acceptable to the Board. No new fee simple lands would be required to accommodate the additional facilities at existing pump stations. The Board finds that Enbridge's anticipated requirements for permanent easements and temporary work spaces are reasonable and justified.

In deciding whether to grant the exemptions sought by Enbridge, the Board is mindful of the rights of landowners whose property Enbridge proposes to acquire. The Board is also cognizant of the potential timing concerns of Enbridge if it is unable to obtain by agreement all of the necessary land rights for the proposed facilities.

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<sup>1</sup> Enbridge's other requests for section 58 exemptions are addressed in Chapter 6 of these Reasons for Decision.



The Board has granted exemption orders consistent with that being requested by Enbridge in similar circumstances in other proceedings<sup>1</sup> but has conditioned those orders to address landowner rights. Enbridge stated that it could accept a condition requiring it to demonstrate to the Board, prior to construction, that all required land rights had been obtained along the entire Loop 1. In the event that all land rights could not be obtained, Enbridge would be required to demonstrate to the Board that the rights of the landowners for those portions of Loop 1 where the land rights have not been obtained would not be prejudiced by construction of other portions of Loop 1.

Enbridge had, at the time of the hearing, acquired 85 percent of the parcels of land required for Loop 1. In this regard, the Board is satisfied that the land acquisition process is well advanced and considers that the exemption order condition referred to above would protect the rights of the remaining landowners who have not signed easement agreements, while allowing Enbridge the flexibility to begin construction of Loop 1.

Upon issuance of a certificate, the Board would grant Enbridge exemption from the provisions of subsections 31(c) and (d) and section 33 of the Act for Loop 1, subject to the exemption order condition included in Appendix IV to these Reasons for Decision.

### **3.3 Socio-Economic Matters**

Pursuant to the Act, the Board has considered the potential short and long-term socio-economic impacts of Terrace Phase II. Those socio-economic matters related to noise, heritage resources and traditional use of land and resources by aboriginal peoples are discussed in the CEAA Environmental Screening Report. The issues discussed herein deal with ongoing aboriginal consultation and economic benefits.

#### **3.3.1 Aboriginal Issues**

During the Early Public Notification process, Enbridge first met with representatives of the Federation of Saskatchewan Indian Nations (FSIN). During these discussions, the FSIN directed Enbridge to focus its consultation efforts on the Battlefords Tribal Council (BTC). The BTC represents the First Nations closest in proximity to the project, with the nearest Indian reserve land being 75 km from the proposed right of way. Enbridge complied and provided information to the BTC regarding the project scope, the environmental assessment and potential socio-economic benefits associated with the project. Numerous meetings were held with the BTC and the FSIN was kept apprised of these discussions. Enbridge indicated that the proposed project was positively received and there were no concerns raised by these First Nation groups regarding the application or the Environmental and Socio-Economic Impact Assessment. Enbridge agreed to, and has continued, dialogue and consultation with these First Nation groups.

Two aboriginal groups requested and were granted intervenor status: the Treaty Four - Treaty Six FSIN Task Force (Task Force) and the Aboriginal Resource Consortium (ARC). In its request for intervenor status, the Task Force identified its interest in the proceedings to include, but not be limited to, the

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<sup>1</sup> TransCanada PipeLines Limited, GH-3-98, Reasons for Decision dated November 1998; TransCanada PipeLines Limited, GH-2-97, Reasons for Decision dated November 1997.

following: environmental impact review and environmental protection; social impact review; archeological impact review; protection of traditional sites and historically significant and sensitive areas; and economic development opportunities including, but not limited to, employment and investment opportunities and business and training opportunities available to the members of the Treaty Four and Treaty Six Nations. Representatives of the BTC and the FSIN, Mr. Graham Wuttunee and Vice Chief Lonechild, respectively, participated in the OH-1-2000 hearing as witnesses and their presentations are discussed below.

In its request for intervention, ARC stated that its interest was generally related to the historical socio-economic disadvantages of aboriginal peoples in the pipeline construction industry and any policies Enbridge has in respect to aboriginal participation in its proposed project. ARC did not provide evidence or participate in the hearing.

### **Mr. Graham Wuttunee**

Mr. Wuttunee was introduced at the hearing as the duly-appointed spokesperson for Treaty Six and the BTC, a member of the Red Pheasant First Nation and the First Nations liaison between Enbridge and the Treaty Six First Nations of Saskatchewan and Alberta. Mr. Wuttunee submitted that he endorsed the project and discussed the commitments made to the BTC by Enbridge as negotiated by the two parties. These commitments are discussed below. Mr Wuttunee requested that the Board ensure the commitments made by Enbridge are realized.

Additionally, Mr. Wuttunee expressed concern that, in his view, First Nation inherent rights to lands and resources have not been honoured in this and other similar resource development projects.

### **Vice Chief Guy Lonechild**

Vice Chief Lonechild was introduced at the hearing as the Second Vice Chief of the FSIN and as holding the portfolio for oil, gas and natural resources for the FSIN. He stated that he was speaking on behalf of the FSIN and the Chiefs of Treaty Four and Treaty Six.

Vice Chief Lonechild indicated his support for the project primarily due to the commitments made by Enbridge to ensure First Nation benefits and participation. Vice Chief Lonechild also emphasized the need for First Nations to foster economic partnerships with industry.

### **Commitments**

At the hearing, Enbridge submitted as evidence its letter to the BTC dated 18 March 2001 outlining commitments to the BTC. These commitments were negotiated in response to issues raised by the BTC and the FSIN and, in particular, related to the provision of contracting, environmental management, capacity building and employment benefits from Terrace Phase II to the members of the BTC. Both First Nation witnesses indicated their satisfaction with the efforts of Enbridge to address the issues and their support for the resulting commitments. Counsel for the Task Force acknowledged that the letter of commitments accurately summarized what had been agreed to; however, the Task Force believes it is important to further document details of the commitments in a negotiated memorandum of understanding.

## **Conditions**

At the hearing, counsel for the Task Force tabled a set of four draft conditions for the Board to consider should the Board approve the project (refer to Appendix III). Generally, these conditions sought assurances that Enbridge honour any current and future commitments it may have with the Task Force, that the Company report to the Board regarding its activities related to these commitments and that Enbridge develop an Aboriginal Policy.

During Final Argument, counsel for Enbridge disagreed with the inclusion of the proposed conditions with the exception of condition two which would require Enbridge to submit to the Board progress reports with information concerning employment, training and progress of economic opportunities for First Nation peoples. These reports would be submitted on a monthly basis until commencement of operation. With regard to the other conditions, Enbridge argued that any condition which does not have a clear objective compromises the construction and operation of the proposed pipeline. Enbridge also argued that the kind, nature and degree of consultation it had with the BTC and the FSIN was fair and commensurate with the scope of the project and that the commitments outlined in Enbridge's letter demonstrate a more than reasonable effort on the part of Enbridge to reach agreement with the BTC and the FSIN.

Counsel for the Task Force argued that, although Enbridge's letter of commitments accurately summarized what Enbridge is prepared to do, the Task Force requires further assurances beyond those which Enbridge has outlined in its letter of commitments, including a formally executed memorandum of understanding between the company and the Task Force specifying the details of these commitments. Counsel for the Task Force also argued that the Board has imposed similar conditions in past decisions.

### ***Views of the Board***

The Board notes that after extensive consultation between Enbridge, the BTC and the FSIN, an agreement on the issues of concern to these First Nations groups regarding the proposed project was successfully reached by the parties. A process for a continuing dialogue between the parties has been established through the First Nations' Liaison and Communications Officer and monthly project briefings to the BTC Chiefs or the Tribal Council Management. The Board also notes that the BTC and the FSIN have indicated their support for the project given the commitments made by the company. The Board is satisfied that Enbridge has provided opportunities for these First Nations groups to participate in the applied-for project through project employment initiatives, specific environmental site monitoring activities and the involvement of Elders in the identification of traditional use sites and the provision of advice on appropriate mitigation measures. With respect to the issue of resource revenue sharing, the Board agrees with both counsel that this hearing was not the proper forum for the resolution of that issue which would be addressed more appropriately through government to government negotiations.

Regarding the proposed conditions, the Board has broad discretion pursuant to section 54 of the Act to attach terms or conditions to a pipeline certificate "as the Board considers necessary or desirable in the public interest". The purpose of certificate conditions is to specify the Board's requirements for the construction and operation of a pipeline. Thus, for example, the Board has attached conditions to approvals that require parties to



provide additional information, to complete studies or to conduct programmes to monitor environmental impacts. In other situations, where it has been found that consultations prior to approval of the pipeline have been inadequate, the Board has concluded that it would be necessary or desirable for the pipeline company to undertake further consultations with affected parties.

In considering whether a proposed condition should be attached to an approval, the practical effects of that condition, based on the circumstances of the particular application, must be addressed. Specifically, the Board must have regard for the clarity, certainty and direct relation of the proposed condition to the applied-for project. The imposition of conditions which fail to meet any of the above criteria could jeopardize a project that has been approved in the public interest, by initiating prolonged debate or litigation over the interpretation of a condition.

Counsel for the Task Force submitted that, in past decisions, the Board has imposed conditions similar to those requested by his clients. However, the Board notes the different circumstances and evidence before the Board in the decisions referred to by counsel in final argument. For example, in previous decisions, based on the particular facts before it, the Board has imposed conditions requiring a company to submit written protocols or enter into negotiations, where consultation with aboriginal people was not carried out in a timely manner<sup>1</sup> or where affected First Nations and a company had disagreed on a number of significant matters<sup>2</sup>. The Board has imposed conditions requiring a company to monitor the success of its commitments to First Nations and Métis where participation in the project by those groups was considered by the Board to be important and where memoranda of understanding had not been completed with all aboriginal persons along the project route<sup>3</sup>.

In this instance, the evidence demonstrates that extensive consultation has taken place between Enbridge, the BTC and the FSIN, which culminated in the agreement summarized in a letter of commitments dated 18 March 2001 from Enbridge to the BTC. This letter commits Enbridge to support BTC participation in the project, to provide funding for capacity building initiatives and to address concerns regarding traditional use sites which may be present in the vicinity of the project. While the parties may choose to enter into a more formal agreement to address the details of the matters set out in the letter of commitments, the Board is of the view that the commitments that are directly related to the construction and operation of the applied-for facilities are clear and unambiguous. The resolution of any dispute that may arise from the letter of commitments would, in the opinion of the Board, fall within the purview of a court of competent jurisdiction.

Conditions 1, 3 and 4 as proposed by the Task Force each contain elements requiring some further level of agreement between the parties prior to construction or operation of

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<sup>1</sup> The Sable Offshore Energy Project and the Maritimes & Northeast Pipeline Project, GH-6-96, Reasons for Decision dated December 1997.

<sup>2</sup> Maritimes and Northeast Pipeline Management Ltd., GH-2-99, Reasons for Decision dated October 1999.

<sup>3</sup> Alliance Pipeline Ltd. on behalf of Alliance Pipeline Limited Partnership, GH-3-97, Reasons for Decision dated November 1998.



the pipeline. In considering the attachment of such conditions, the Board must have regard for the possibility that, despite reasonable attempts, the parties may not be successful at reaching further agreement. For example, the parties may be unable to reach an agreement with respect to the objectives and the strategies for the achievement of those objectives itemized in proposed Condition 1(c), or with respect to the report required by proposed Condition 3. In the event of a failure to agree, a further Board process may be required to resolve any deadlock, thereby creating uncertainty for the project during construction or operation, despite the project having been previously approved in the public interest.

The Board must also have regard for the direct application of the proposed conditions to the applied-for project. Proposed Condition 3 appears to be very wide-ranging in that it is not limited to those commitments set out in Enbridge's letter of 18 March 2001 to the BTC. It makes reference to "all of the Company's obligations and undertakings . . .". It is unclear whether Condition 3, as proposed, is referring only to those commitments set out in the Enbridge letter of commitments or whether it is intended to capture other obligations or undertakings of Enbridge.

Proposed Condition 4 is directed at the development by Enbridge of a general Aboriginal Policy which would, as described by counsel for the Task Force, ". . . be utilized for future purposes and future projects as they affect the First Nations of Saskatchewan and Alberta.". The Board recognizes the value in developing long term working relationships and general policies in respect of the participation of aboriginal people in pipeline projects. However, the development of such a general policy is in the Board's view beyond the scope of the applied-for facilities.

For all of the above reasons, the Board is of the view that imposing proposed Conditions 1, 3 and 4 would be unnecessary and undesirable in the public interest. Therefore, the Board is not prepared to attach those conditions to any certificate that may be issued in respect of this project. However, the Board recognizes the importance of participation in pipeline projects by aboriginal people who may be affected by those projects and encourages the development of meaningful partnerships between Board-regulated companies and aboriginal groups to facilitate that participation. Thus the Board wishes to be kept apprised of the progress of the initiatives referred to in Condition 2 and will attach Condition 2 to any certificate that may be issued for the applied-for project. The Board would also direct Enbridge to serve the reports referred to in Condition 2 on the Task Force and the BTC concurrently with the reports being filed with the Board.

## Chapter 4

# Supply and Markets

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### 4.1 Supply

Enbridge submitted a forecast which projects that the production of crude oil and equivalent from western Canada will increase from an average rate of 316 800 m<sup>3</sup>/d (1,992,400 b/d) in 1999 to an estimated 437 000 m<sup>3</sup>/d (2,748,600 b/d) in 2010. The forecast was based on an industry survey of western Canadian crude oil supply and demand conducted in the winter of 1999/2000 and follow-up discussions to ensure agreement by the producers regarding the reasonableness of the forecast. Survey respondents included crude oil producers, connected pipeline companies that deliver supply to the Enbridge system and the provincial governments of the four western provinces. Participants were asked to base their projections on the following price assumptions:

- a price per barrel for West Texas Intermediate (WTI) at Cushing, Oklahoma that increased from US\$21.95 in 2000 to US\$27.00 in 2010; and
- a light/heavy price differential between WTI and Bow River at Chicago, Illinois rising from US\$4.50/barrel in 2000 to US\$7.00/barrel by 2010.

While the survey results indicated growth in western Canadian crude oil production of bitumen and synthetic crude oil, Enbridge submitted that such growth will be limited by market demand. Therefore Enbridge adjusted its forecasted supplies of these crude oil types to reflect the projected demand in connected markets. Enbridge noted that, while its heavy crude oil forecast assumed that bitumen production would be market limited, it is equally likely that conventional heavy crude oil production would be limited instead. Regardless of which heavy crude oil type is market constrained, Enbridge considers that the overall supply of heavy crude oil will achieve the same forecast levels.

Enbridge's production forecast shows a 10 percent increase in the supply of light crude oil and equivalent over the forecast period, chiefly due to increased supply of synthetic crude oil from the integrated mining plants. While all of the synthetic crude oil produced at mining plants is classified in the light crude oil and equivalent category in the production forecast, Enbridge noted that it had received indications from industry that a certain proportion of the increase in synthetic crude oil production will be heavy and sour in nature with a low viscosity but a high density. This heavy synthetic crude oil would be transported on Line 4, one of Enbridge's heavy crude oil lines.

The forecast indicates that the majority of the projected increase in western Canadian crude oil supply will come from increased production of conventional heavy crude oil and bitumen. These products must be blended with varying amounts of diluent in order to be transported in Enbridge's system. Enbridge calculated the total heavy blend supply as conventional heavy production plus bitumen production plus diluent required for transportation. The heavy crude oil supply forecast submitted by Enbridge is summarized in Table 4-1.

**Table 4-1**  
**Forecast of Western Canadian Heavy Crude Oil Supply, Demand and Throughput**  
**(000 m<sup>3</sup>/d)<sup>a</sup>**

	2000	2002	2004	2006	2008	2010
<b>Heavy Blend Supply</b>						
Conventional Heavy Production	88.5	107.1	110.7	111.4	112.2	111.8
Bitumen Production	44.9	51.5	87.9	94.2	96.1	101.0
Diluent	21.5	28.3	46.5	47.4	49.4	52.3
Total Available Heavy Blend	154.9	186.9	245.1	253.0	257.7	265.1
<b>Non-Enbridge Demand</b>						
Canadian Markets <sup>b</sup>	18.8	17.2	51.2	51.2	51.2	51.2
U.S. Markets	37.9	31.3	35.6	36.4	38.4	40.6
Total Non-Enbridge Demand	56.7	48.5	86.8	87.6	89.6	91.8
<b>Heavy Blend Available to Enbridge</b>	<b>98.3</b>	<b>138.5</b>	<b>158.4</b>	<b>165.4</b>	<b>168.1</b>	<b>173.3</b>
<b>Heavy Throughput - Lines 2 and 4</b>		<b>132.8</b>	<b>159.5</b>	<b>168.7</b>	<b>171.5</b>	<b>177.6</b>

<sup>a</sup> totals may not add due to rounding

<sup>b</sup> includes standalone upgraders

## 4.2 Markets

Western Canadian crude oil is delivered to markets in western and eastern Canada and to export markets in PADDs<sup>1</sup> I, II, IV and V and offshore. Enbridge stated that 16 percent of its volumes in 1999 (including natural gas liquids and refined products) was delivered to markets in western Canada, 28 percent was delivered to markets in eastern Canada and the remaining 56 percent was delivered to export markets in PADDs I, II and IV. PADD II is the largest export market for western Canadian crude oil and, in 1999, Enbridge delivered 117 600 m<sup>3</sup>/d (739,600 b/d) to this market. Enbridge submitted that the capacity of refineries served by Enbridge in PADD II totals approximately 430 800 m<sup>3</sup>/d (2,710,100 b/d).

Enbridge derived its crude oil disposition forecast by balancing western Canadian crude oil production with refinery demand in all of the markets that can access western Canadian crude oil. The disposition of light crude oil and equivalent (including upgraded heavy crude oil) is forecast to increase through the forecast term from 203 400 m<sup>3</sup>/d (1,279,300 b/d) in 1999 to 217 100 m<sup>3</sup>/d (1,365,500 b/d) in 2010. Enbridge expects the disposition of heavy crude oil and bitumen to increase as follows:

- western Canadian demand (primarily upgrading facilities) is expected to increase from 16 200 m<sup>3</sup>/d (102,000 b/d) in 1999 to approximately 62 000 m<sup>3</sup>/d (390,000 b/d) in 2005 and then remain relatively constant through 2010;

<sup>1</sup> PADD refers to the U.S. Petroleum Administration for Defense Districts. Geographically, the five districts are East Coast (I), Midwest (II), Gulf Coast (III), Rocky Mountain (IV) and West Coast (V).

- Ontario demand is expected to increase from 12 300 m<sup>3</sup>/d (77,400 b/d) in 1999 to 20 700 m<sup>3</sup>/d (130,200 b/d) in 2010; and
- export demand is expected to increase from 105 500 m<sup>3</sup>/d (663,600 b/d) in 1999 to 198 700 m<sup>3</sup>/d (1,249,800 b/d) by 2010. The export market is limited by the expected conversion capacity available in PADD II.

### 4.3 Western Canadian Crude Oil Available to Enbridge

Production available to Enbridge is calculated as the difference between western Canadian crude oil production and non-Enbridge western Canadian crude oil disposition. Production volumes were adjusted for blending of heavy crude oil with diluent, the addition of recycled and manufactured diluent and the upgrading of certain heavy blend volumes to synthetic light crude oil. The forecast of heavy crude oil supply available to Enbridge is summarized in Table 4-1.

### 4.4 Throughput

Enbridge submitted a forecast for throughput on its heavy crude oil lines (Lines 2 and 4) for the period of 2002 to 2010. This forecast was based on Enbridge's expectation that the production of heavy crude oil will increase over the forecast period. The actual disposition of heavy crude oil supply was adjusted to take into consideration:

- diluent required for transportation;
- heavy crude oil upgrading;
- the production of heavy synthetic crude oil; and
- definitional differences in reporting the supply and disposition of medium crude oil.

A summary of Enbridge's heavy crude oil throughput projections is shown in Table 4-1. Enbridge's forecast indicates that the projected potential throughput on Lines 2 and 4 will exceed the current capacity of these lines (127 100 m<sup>3</sup>/d or 799,400 b/d) in 2002 and will continue to increase throughout the forecast period.

#### *Views of the Board*

The Board recognizes the uncertainties associated with forecasts of supply, markets, disposition and throughput of crude oil and equivalent. However, Enbridge's forecasts were developed in consultation with industry and provincial governments and these forecasts were not challenged by other parties. As a result, the Board considers these forecasts to be reasonable.

Based on the forecasts provided by Enbridge, the Board accepts as reasonable Enbridge's expectation that heavy crude oil throughput will exceed the existing capacity of Lines 2 and 4 of its system in 2002.



## Chapter 5

# Financial Matters and Economic Feasibility

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## 5.1 Financial Matters

In 1998, CAPP and Enbridge entered into the Terrace Toll Agreement to assist in financing all phases of the Terrace Expansion Program. The Board approved the final version of this agreement on 17 December 1998. CAPP triggered the Terrace Phase II expansion by a request to Enbridge on 25 October 2000 as per the agreement.

The Terrace Toll Agreement establishes a toll increment to base tolls equivalent to 31.5 cents per m<sup>3</sup> (\$0.05 per barrel) of light crude oil for transportation from Edmonton, Alberta to Griffith, Indiana adjusted for distance and commodity credits and surcharges. Up to 25.2 cents per m<sup>3</sup> (\$0.04 per barrel) of this increment is charged for transportation on the Canadian portion of the system. This toll increment has been charged since the Terrace Phase I expansion came into service in April 1999 and will continue until year-end 2013.

On 15 June 2000, the Board approved a new Incentive Toll Settlement for Enbridge. Under this settlement, base tolls are calculated each year using pre-Terrace capacity and costs. Enbridge is assured revenue from base tolls for the additional Terrace capacity through the transportation revenue variance mechanism. The transportation revenue variance increases the following year's revenue requirement and tolls to recover revenue from base tolls associated with any shortfall in throughput compared to the system operating at its Terrace Phase II capacity. Enbridge indicated that, if none of the 6 900 m<sup>3</sup>/d (43,400 b/d) in additional capacity is used once the Terrace Phase II facilities are in service, base tolls for the following year could increase up to 6.3 cents per m<sup>3</sup> (\$0.01 per barrel) of light crude oil by virtue of the associated transportation revenue variance.

Enbridge submitted that it intends to finance the \$140 million cost of Terrace Phase II through a mixture of short and long term debt and equity, either internally-generated or newly issued, as appropriate.

During the proceeding, no party raised any concerns about financing or tolls.

### *Views of the Board*

Both the Terrace Toll Agreement and the Incentive Toll Settlement have been approved by the Board in separate proceedings. The Board is satisfied that Enbridge has sufficient shipper support and resources to finance the Terrace Phase II expansion.

## 5.2 Economic Feasibility

In its application, Enbridge measured the economic impact of Terrace Phase II by assessing the projected increase in industry cash flow that would result from additional volumes of crude oil reaching market via its pipeline system. Enbridge compared the deliveries of crude oil through its current pipeline system to the deliveries through the system assuming that the Terrace Phase II facilities were constructed.

Transportation costs and resultant netbacks at Edmonton were considered for each of the markets for which western Canadian crude oil is forecast to move from 2002 to 2010. Enbridge's presentation of illustrative netbacks at Edmonton for 1999, from each of the markets that process western Canadian crude oil, indicated that its system generally provides western Canadian crude oil producers with the highest netbacks, particularly with its connection to the PADD II market.

Enbridge quantified the net revenue benefit as the net present value of the difference between industry revenues with the Terrace Phase II facilities and without the Terrace Phase II facilities. Enbridge calculated that, with the Terrace Phase II facilities in service, industry revenues over the 2002 to 2010 period are expected to increase by about \$3.3 billion (net present value in 2002) compared to the "without expansion" facilities case.

### *Views of the Board*

The Board assesses the economic feasibility of new pipeline facilities by determining the likelihood of the facilities being used at a reasonable level over their economic life and the likelihood of the tolls being paid. In the case of Terrace Phase II, this assessment included an evaluation of oil supply and markets, the payment of tolls and the financing of the project. The Board is satisfied with this evidence, including the calculation of the net revenue benefit to industry of the Terrace Phase II facilities. The Board finds that the facilities are likely to be used at a reasonable level over their economic life.

## Chapter 6

### Section 58 Exemption for the Station Facilities

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Enbridge is seeking a certificate pursuant to section 52 of the Act for the construction of Loops 1, 2 and 3 and an order pursuant to section 58 of the Act exempting all Terrace Phase II pump units, related facilities and station piping (station facilities) from sections 30, 31 and 47 of the Act<sup>1</sup>. Section 30 requires a company to have a certificate and leave to open prior to operating a pipeline. Section 31 requires a company to have a certificate and to have complied with all conditions to the certificate before beginning construction of a pipeline. This provision also requires the filing and approval of PPBoRs. Section 47 requires a company to obtain leave of the Board to open its pipeline. Enbridge's main purpose in seeking these exemptions is to eliminate the need for a certificate for the construction and operation of the station facilities. This would allow Enbridge to begin construction of the station facilities without having to wait for the approval of the Governor in Council (GIC).

#### 6.1 Sections 52 and 58 of the Act

Section 52 is the general approval provision for all pipeline facilities under the Act. Section 52 states:

52. The Board may, subject to the approval of the Governor in Council, issue a certificate in respect of a pipeline if the Board is satisfied that the pipeline is and will be required by the present and future public convenience and necessity and, in considering an application for a certificate, the Board shall have regard to all considerations that appear to it to be relevant and . . .

It is important to note that the issuance of a certificate is subject to GIC approval. Once a certificate is issued under section 52, a number of further requirements under the Act are triggered, such as the filing of PPBoRs and the detailed route hearing process.

Section 58 provides for exemptions to the general approval provision of section 52 and states:

58. (1) The Board may make orders exempting
- (a) pipelines or branches of or extensions to pipelines, not exceeding in any case forty kilometres in length, and
  - (b) such tanks, reservoirs, storage facilities, pumps, racks, compressors, loading facilities, interstation systems of communications by telephone, telegraph or radio, and real and personal property and works connected therewith, as the Board considers proper,
- from any or all of the provisions of sections 29 to 33 and 47.

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<sup>1</sup> As discussed in section 3.2.3 of these Reasons for Decision, Enbridge also applied for certain section 58 exemptions for Loop 1, which did not include a request for exemption from sections 30 and 47.



These provisions allow the Board to grant exemptions for certain facilities. If exemption from section 30 is granted, the effect is to approve the facilities without the requirement of a certificate and the approval of the GIC.

## **6.2 Submissions of Enbridge**

Enbridge submitted that the construction and installation of the station facilities would take six to seven months to complete, given the complexity of the work required (i.e., locating existing facilities; civil, mechanical and electrical work; and commissioning activities). Enbridge further testified that, if the exemption for the station facilities was not granted, the entire project would not be completed in the fourth quarter of 2001 which would "... create issues for the petroleum producers who wish to utilize the pipeline to move their receipts ..." and "there would be upstream impacts on a decision not to provide the section 58 exemption ...".

In order to complete the entire Terrace Phase II project by the fourth quarter of 2001, Enbridge submitted that it must start construction of the station facilities no later than 15 May 2001. In response to questioning by the Board, Enbridge indicated that neither the proposed station facilities nor the proposed pipeline loops are stand-alone facilities, as neither would be usable without the other.

Enbridge argued that the time between an approval of the station facilities under section 58 and the approval of the remainder of the facilities under section 52 would be approximately one month. Thus the risk of the section 58 station facilities being constructed and the section 52 certificate not being granted is minimal in Enbridge's view. Enbridge submitted that it would be at risk financially for any costs expended on the station facilities should the certificate for the remaining facilities not be granted.

### ***Views of the Board***

In discussing this particular portion of the Enbridge application, it is necessary to examine the intent of Parliament reflected in the Act by the inclusion of sections 52 and 58. At the time of enacting the Board's enabling legislation, it is clear that Parliament was of the view that pipeline facilities, in general, should have not only the rigorous review of all relevant factors and approval of the Board but also the approval of the GIC. Absent section 58, each and every facility construction and modification, no matter how minor, would be subject to a public hearing, the issuance of a certificate, which would be subject to GIC approval, and further procedural requirements. Parliament must have seen that such a rigorous assessment was not necessary in all cases and, accordingly, provided the Board with discretion, in certain cases, to exempt companies from some or all of these requirements, including the need for GIC approval. As with all administrative tribunal decisions, the discretion that Parliament intended must be applied with regard to the evidence before it and, in the case of an exemption such as this, with the knowledge that an exemption is not to be lightly granted. Exemption from any of the requirements of the Act and, in particular, the requirement for GIC approval should only be granted on clear and compelling evidence.

In exercising its discretion, the Board has often granted applications for section 58 orders to exempt companies from the requirement of a certificate for discrete projects involving additions or modifications to existing pipeline facilities and for new pipelines no greater



than 40 km in length. Under section 58, applications for smaller and more routine projects may, where appropriate, be approved by the Board without GIC approval. The Board has also granted applications for section 58 exemptions for portions of larger projects considered within a public hearing process<sup>1</sup>. Such approvals have been given on a case-by-case basis after careful consideration of the evidence before the Board.

In this case, the Board has before it an application for a single, integrated project consisting of three pipeline loops and modifications and additions to existing pump stations. None of these facilities can be used or operated independently from the other components of the project. Acceding to Enbridge's request would require the Board to partition an otherwise single, integrated project into two distinct sections for the purpose of obtaining Board approval of the station facilities at an earlier date and GIC approval of the pipeline loops at a later date. This would allow the construction of the station facilities to begin prior to the approval of the pipeline loops being granted.

The Board has considered Enbridge's arguments in support of its request for exemption. The request for expeditious consideration of an application due to timing issues is often raised by applicants. In argument, counsel for Enbridge submitted that, in all probability, the time between a Board decision under section 58 and a decision of the GIC would be one month. Counsel argued that the Board should exercise its discretion under section 58 to exempt the station facilities because of that short temporal link between the two potential decisions. The Board does not find this argument particularly compelling. On the contrary, it seems to the Board that such a short period of time, in the absence of clear evidence of some serious detriment to the project, would weigh heavily against an exemption from a certificate in these circumstances.

Nor does the Board find persuasive Enbridge's assertion that, should the GIC not grant its approval for the remaining facilities, it would assume any financial risk for the construction of the station facilities that had taken place. In the Board's view, the fact that such a risk exists is, in and of itself, argument against the partitioning of the project, even if that risk would be minimal as suggested by Enbridge.

Enbridge also referred to the Board's decision in OH-1-98, in which exemptions similar to those being sought in this case were granted. While administrative tribunals are not bound by their past decisions, the Board is of the view that a tribunal should have regard to its past decisions to ensure consistency in its decision making. Consideration of the evidence relied upon and the basis for past decisions should be considered when similar circumstances present themselves in subsequent proceedings. The Board notes that the OH-1-98 Reasons for Decision do not refer to the evidence on which the Board relied in granting the exemption nor is the basis for the decision to grant the exemption explained. As a result there is nothing in the OH-1-98 Reasons for Decision, other than the decision itself, to guide this panel of the Board in making its decision.

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<sup>1</sup> TransCanada PipeLines Limited, GH-5-89, Reasons for Decision dated November 1990; Interprovincial Pipe Line Inc., OH-1-98, Reasons for Decision dated June 1998.

However, in the GH-4-98 proceeding<sup>1</sup> subsequent to OH-1-98, the Board dealt squarely with the issue of severing components of a project for the purpose of obtaining a section 58 exemption from the requirement of a certificate for those components. In a preliminary motion, Maritimes and Northeast Pipeline Management Ltd. (M&NP) requested that the Board grant a section 58 exemption from, *inter alia*, section 30 of the Act for a 5 km portion of the proposed Point Tupper Lateral pipeline. In its reasons for rejecting the motion of M&NP, the Board stated that it is not open to a company to divide its project into segments so as to exempt a pipeline greater than 40 km in length from the requirement to obtain a certificate to construct and operate that pipeline. In reaching its decision, the Board relied on the decision of the Federal Court of Appeal in the case of *Alberta (Attorney General) v. Westcoast Energy Inc.*<sup>2</sup> (Pesh Creek).

Enbridge submitted that the facts in GH-4-98 were wholly distinguishable from those of the present case, as this application deals with discrete pump and associated facilities located wholly on Enbridge land and Enbridge is not seeking approval to exempt an indiscrete section in the middle of a contiguous pipeline. Enbridge also argued that the decision in Pesh Creek does not limit the Board's authority to grant an exemption in this case.

Enbridge made it clear in its evidence that the station facilities could not be used without the pipeline loops. On that basis, the Board does not consider the station facilities to be discrete from the rest of the project. Exempting the station facilities from the requirement of a certificate in the circumstances of the single, integrated Terrace Phase II project is, in the Board's view, analogous to exempting a section of pipe from a contiguous line.

Whether or not Enbridge is correct in its interpretation of the Pesh Creek decision, the Board considers that partitioning of the Terrace Phase II project for approval purposes in these circumstances would not be a proper exercise of the Board's discretion pursuant to subsection 58(1)(b) of the Act. The request for exemption of the station facilities from the requirement of a certificate is therefore denied. Accordingly, for the purpose of issuing a certificate, all aspects of the Terrace Phase II project will be considered together and, if approved by the Board, will be forwarded as a single, integrated project to the GIC for its approval.

However, should the GIC approve the Terrace Phase II project, the Board is of the view that this would be a proper case in which to grant an exemption for the station facilities from the requirements of subsections 31(c) and (d) and section 33 of the Act, as these facilities are to be constructed on Enbridge property and no new lands would be required.

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<sup>1</sup> Maritimes and Northeast Pipeline Management Ltd., GH-4-98, Reasons for Decision dated January 1999.

<sup>2</sup> (1997), 208 N.R. 154 (F.C.A.).

### **6.3 Exemption from the Leave to Open Provision of the Act**

Enbridge requested exemption, pursuant to section 58 of the Act, from the provision of section 47 of the Act in respect of the requirements for leave to open for the applied-for pumping units, related facilities and station piping.

#### ***Views of the Board***

In determining whether to grant exemption from leave to open, the Board generally considers criteria such as: the consequences of a release of service fluid; the compliance history of a company; the location of the pipeline or pipeline facility; and the use of unconventional design or construction practices.

Given that the pumping units, related facilities and station piping are intended to operate in low vapour pressure service and are located on station property, the Board would exempt Enbridge from the provisions of paragraph 30(1)(b) and section 47 of the Act for these facilities. The Board is satisfied that these facilities may safely be opened for transmission.

## Chapter 7

### Disposition

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The foregoing constitutes our Reasons for Decision in respect of the application heard by the Board in the OH-1-2000 proceeding. The Board is satisfied from the evidence that the Terrace Phase II facilities are and will be required by the present and future public convenience and necessity.

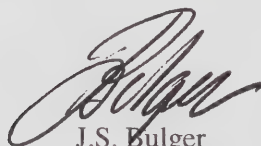
The Board approves Enbridge's application pursuant to section 52 of the Act for new pipeline facilities and will recommend to the Governor in Council that a certificate be issued, subject to the certificate conditions set out in Appendix IV.

Upon issuance of a certificate, the Board will issue an order pursuant to section 58 of the Act exempting the portion of line pipe between KP 175.9 and KP 209.0 (Loop 1) from the requirements of subsections 31(c) and (d) and section 33 of the Act, subject to the exemption order condition set out in Appendix IV.

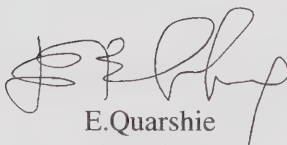
The Board denies, in part, Enbridge's application pursuant to section 58 of the Act exempting all Terrace Phase II pumping units, related facilities and station piping from the requirements of sections 30, 31 and 47 of the Act. Upon issuance of a certificate, the Board will issue an order pursuant to section 58 of the Act exempting the pumping units, related facilities and station piping from the requirements of paragraph 30(1)(b), subsections 31(c) and (d), and sections 33 and 47 of the Act.



J.A. Snider  
Presiding Member



J.S. Bulger  
Member



E. Quarshie  
Member

Calgary, Alberta  
May 2001



## Appendix I

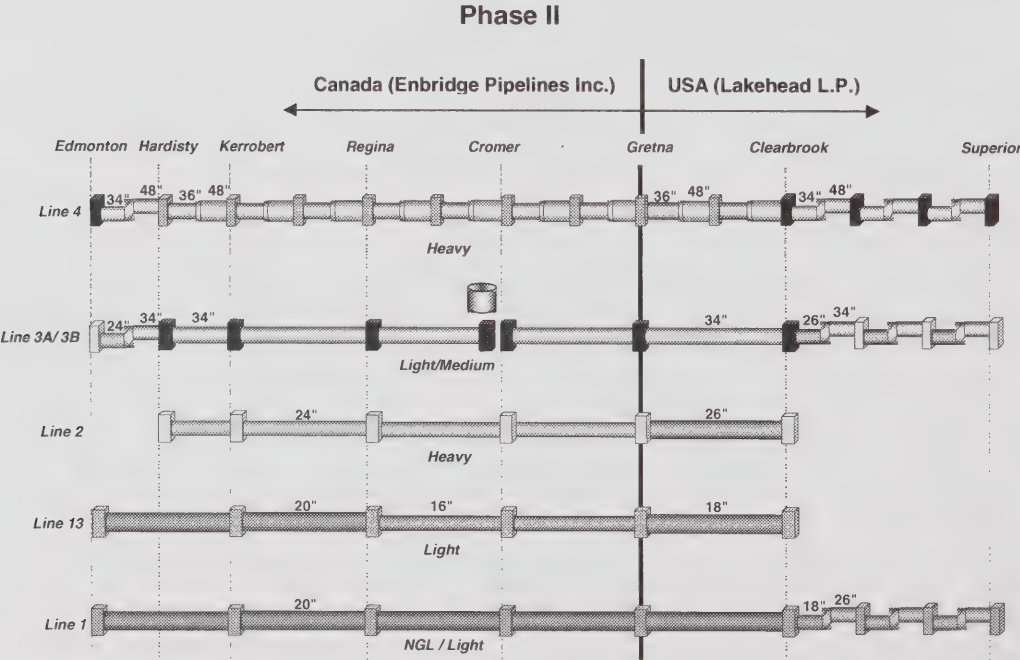
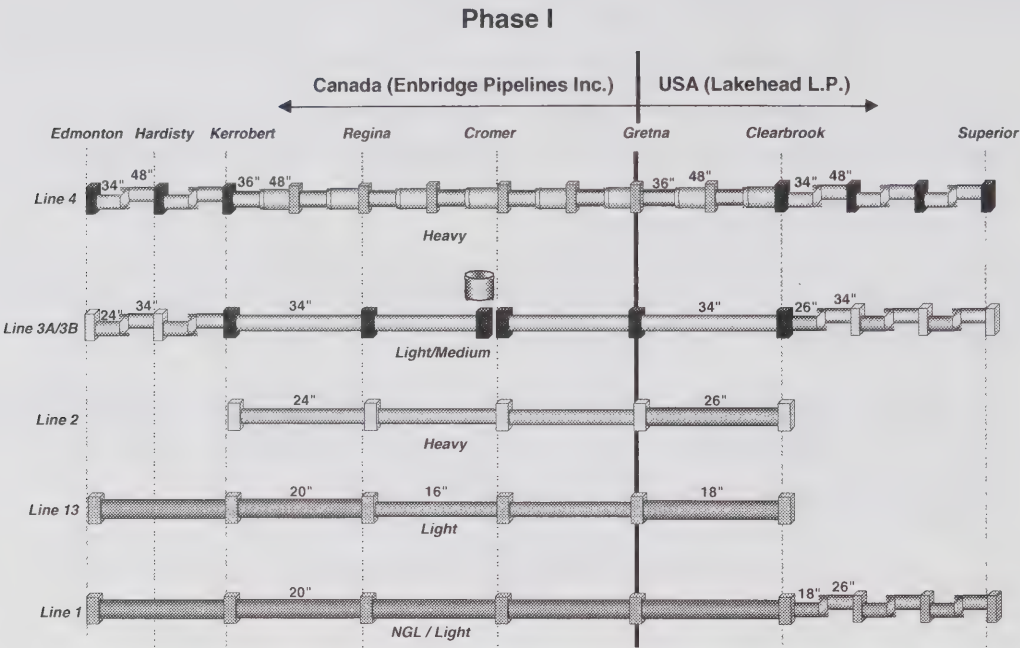
### List of Issues

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1. The need for the proposed facilities.
2. The economic feasibility of the proposed facilities.
3. The appropriateness of the proposed method of financing the project.
4. The adequacy of supply and markets.
5. The appropriateness of the location of the proposed facilities, land requirements and the land rights acquisition process.
6. The potential environmental and socio-economic effects of the proposed facilities, including those factors outlined in subsection 16(1) of the *Canadian Environmental Assessment Act*.
7. The appropriateness of the design of the proposed facilities.
8. The terms and conditions to be included in any approval which may be issued.

Appendix II

Pipeline System Configuration



## Appendix III

# Conditions Proposed by the Task Force

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### PRIOR TO COMMENCEMENT OF CONSTRUCTION

1. Unless the Board otherwise directs, the Company shall file with the Board, at least 30 days prior to commencement of construction:
  - (a) confirmation that identification of issues of concern, in respect of traditional use sites has been completed with Saskatchewan First Nations communities, as represented by the Treaty No. 4 - Treaty No. 6 - Federation of Saskatchewan Indian Nations Task Force, including but not limited to:
    - (i) a listing of issues by First Nations;
    - (ii) the measures proposed to mitigate the issues identified in response to (i); and
    - (iii) any comments from the respective First Nations on the measures identified in response to (ii); and
  - (b) confirmation that consultations regarding traditional use sites have been completed with the Treaty No. 4 - Treaty No. 6 - Federation of Saskatchewan Indian Nations Task Force and a description of the mitigation proposed.
  - (c) confirmation that First Nations economic development opportunities, construction worker, operations worker and maintenance worker training and employment programs and opportunities have been identified and confirmed, in writing, along with a strategy for the achievement of those objectives, with the Treaty No. 4 - Treaty No. 6 - Federation of Saskatchewan Indian Nations Task Force.

### DURING CONSTRUCTION

2. Unless the Board otherwise directs, the Company shall submit progress reports to the Board, on a monthly basis, setting forth information regarding employment, training and progress of economic opportunities for the First Nations people, in a form satisfactory to the Board, until commencement of operation.

### PRIOR TO COMMENCEMENT OF OPERATION

3. The Company shall submit to the Board, a report satisfying the Board that all of the Company's obligations and undertakings, with respect to the Treaty No. 4 - Treaty No. 6 - Federation of Saskatchewan Indian Nations Task Force, have been fulfilled, together with acknowledgment and agreement with the report by the proper officers of the said Task Force.

## GENERAL

4. Unless the Board otherwise directs, the Company shall report to the Board on the progress of its Aboriginal Policy and on any negotiations with the Treaty No. 4 - Treaty No. 6 - Federation of Saskatchewan Indian Nations Task Force in accordance with the following schedule; upon publishing the policy; upon implementation of the policy; and upon completion of construction and prior to commencement of operations.



## Appendix IV

# Certificate and Exemption Order Conditions

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### CERTIFICATE CONDITIONS

#### *General*

1. Unless the Board otherwise directs, Enbridge shall cause the approved facilities to be designed, manufactured, located, constructed and installed in accordance with those specifications, drawings and other information or data set forth in its application or as otherwise adduced in evidence before the Board during the OH-1-2000 proceeding.
2. Unless the Board otherwise directs, Enbridge shall implement or cause to be implemented all of the policies, practices, mitigative measures, recommendations, commitments and procedures for the protection of the environment included in or referred to in its application or as otherwise adduced in evidence before the Board during the OH-1-2000 proceeding.

#### *Prior to the Commencement of Construction*

3. Enbridge shall file with the Board, at least 30 days prior to the commencement of any construction activity or as otherwise directed by the Board, a detailed construction schedule(s) identifying major construction activities and shall notify the Board of any modifications to the schedule(s) as they occur.
4. Enbridge shall submit to the Board for approval, at least 30 days prior to the commencement of any construction activity or as otherwise directed by the Board, a detailed outline of information related to environmental protection measures which will be presented to all field personnel during the project-specific safety and environmental orientation.

#### *During Construction*

5. Enbridge shall, during construction, maintain for audit purposes at each construction site a copy of the welding procedures and non-destructive testing procedures used on the project together with all supporting documentation.
6. Enbridge shall file construction progress reports with the Board on a bi-weekly basis in a form satisfactory to the Board. The reports shall include information on the activities carried out during the reporting period, any environmental and safety issues and non-compliances, and the measures undertaken for the resolution of each issue and non-compliance.
7. Unless the Board otherwise directs, Enbridge shall submit progress reports to the Board, on a monthly basis, setting forth information regarding employment, training and progress of economic opportunities for the First Nations people, in a form satisfactory to the Board, until commencement of operation.

### ***Post Construction***

8. Enbridge shall file with the Board, within six months of the date that the facilities are placed in service or as otherwise directed by the Board, a Post-Construction Environmental Report. The report shall describe the environmental issues that have arisen up to the date the report is filed and shall:
  - (a) state whether the issues have been resolved; and
  - (b) describe the measures Enbridge proposes to take in respect of unresolved issues.
9. Enbridge shall file with the Board, on or before the 31 January that follows each of the first and the third complete growing seasons following the filing of the Post-Construction Environmental Report or as otherwise directed by the Board, a report which describes:
  - (a) the status of any unresolved environmental issues identified in the Post-Construction Environmental Report and any other environmental issues that have arisen since that report was filed;
  - (b) a description of the measures Enbridge proposes to take in respect of any unresolved environmental issues; and
  - (c) an assessment of the effectiveness of the reclamation measures undertaken on the right of way based on a comparison with the land use and condition of lands adjacent to the right of way.
10. Enbridge shall file with the Board, on or before the 31 January of the year following the second complete growing season or as otherwise directed by the Board, a summary report of the monitoring and mitigation activities undertaken during the second complete growing season.

### ***Expiration of Certificate***

11. Unless the Board otherwise directs prior to 31 December 2002, this certificate shall expire on 31 December 2002 unless the construction and installation with respect to the applied-for facilities has commenced by that date.

### **EXEMPTION ORDER CONDITION**

Unless the Board otherwise directs, this exemption order will not be effective until the following conditions are satisfied for the facilities included in the first loop of Terrace Phase II (Loop 1):

- (a) except as provided in subsection (b), Enbridge shall demonstrate to the satisfaction of the Board that all required land rights have been acquired for the entire Loop 1 pipeline facilities; and

- (b) in the event that all required land rights have not been acquired for Loop 1, any portion or portions thereof may be constructed provided that, prior to commencing construction on any portion(s) of Loop 1, Enbridge shall demonstrate to the satisfaction of the Board that the rights, as prescribed in the *National Energy Board Act*, of the landowners along that portion(s) of Loop 1 for which Enbridge has not yet obtained the required land rights will not be prejudiced by the construction of any portion(s) of Loop 1.











